DILJIT KAUR PURAN SINGH

v.

PENTADBIR TANAH GOMBAK & ORS

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[ORIGINATING MOTION NO: S2-21-16-1998]
11 AUGUST 1998

LAND LAW: *Caveat - Removal of - Decision of Registrar - Whether aggrieved party should proceed under s. 417 of National Land Code 1965 - Whether should appeal under s. 418*

LAND LAW: *Caveat - Particulars in Form 19B - Particulars relating to address - Change of address - Notification of change of address - Whether notification properly made - National Land Code 1965, Form 26A*

LAND LAW: *Caveat - Removal of - Whether notice of intended removal of caveat properly served - Whether provisions relating to substituted service complied with - National Land Code 1965, s. 432, Form 19C*

The applicant entered a private caveat in respect of a piece of land ('the property') after the second respondent had failed to execute a sale and purchase agreement. The applicant had specified her address ('the first address') in Form 19B. Two months later, by way of registered letter, the applicant had notified the first respondent of a change in her address ('the second address'). About a year later, the first respondent was informed of another change in her address ('the third address'). The applicant then sought specific performance against the second respondent but discovered however that the private caveat had been cancelled and that the property had been transferred to the fourth respondent. It was then discovered that a Form 19C (notice of intended removal of caveat) issued by the first respondent had been forwarded to the first address. Apparently the Form 19C was returned with a note that the applicant had moved and the first respondent then proceeded to serve the Form 19C pursuant to s. 432(1)(a) and (b) (subsituted service). The notice in Form 19C was also displayed on the property, on the notice board of the penghulu's office and also on the notice board of the District Land Office.

The applicant wrote to the first respondent and having received no response filed this application under s. 417 of the National Land Code ('NLC') praying for an order that the cancellation of the private caveat be declared void and that the caveat be reinstated, and for the registration of the title to the fourth respondent to be expunged. The first respondent raised the objection that the applicant ought to have appealed pursuant to s. 418 of the NLC and not to have applied under s. 417 of the NLC.

Held:

[1] The applicant could not rely on s. 417 of the NLC. This was because there was no judgment or order upon which the court was asked to direct the Registrar to act, to give effect to such judgment or order. The Registrar had acted in an administrative capacity in cancelling the caveat. Against that act, the applicant should have relied upon s. 418 of the NLC, where she would have had three months to appeal from the date the cancellation of the caveat was communicated to her.

[2] The National Land Code regulates all dealings relating to land. The forms in respect of the relevant sections provide the manner in which the said sections are to be complied with. In this case, the applicant should have notified the first respondent of the change of address in accordance with Form 26A of the NLC. Since she had failed to do so, no proper notice was in fact given to the first respondent.

[3] The first respondent had acted within his rights when he proceeded to serve a Form 19C by way of substituted service.

[4] Despite the fact that there was an omission of the title in the gazette notification, such notification was sufficient as it contained the fact that notice to cancel the caveat was given.

[Application dismissed.]

Case referred to:
Manilal & Sons Sdn Bhd v. Pentadbir Tanah Daerah, Kulim [1998] 1 CLJ 87 ***(foll)***

Legislation referred to:
National Land Code, ss. 323, 379(1), 417(1), 418, 431(1)(e), 432(1)(a), (b), Forms 19B, 19C, 26A

Plaintiff in person
For the 1st respondent - Tuan Nik Suhaimi Nik Sulaiman
For the 2nd respondent - MF Choo; M/s Wong Choo & Partners
For the 4th respondent - T Kuhendran; M/s Albar Zulkifly & Yap

Reported by Mariette Peters-Goh

JUDGMENT

RK Nathan J:

Facts

The applicant entered a private caveat on 17 October 1994 in respect of a land held under H.S.(M) 2309 Lot 4924 Mukim Hulu Kelang (the property) after the 2nd respondent failed to execute a sale and purchase agreement. The address given by the applicant in Form 19B when entering the caveat pursuant to s. 323 of the National Land Code (NLC) was No. 6 Lorong Sentul Endah, Off Jalan Sentul Murni, 51000 Kuala Lumpur.

On 12 December 1994 by way of a registered letter the applicant notified the Pentadbir Tanah Gombak (the 1st respondent) of her change of address which was stated as No. 24, Jalan L1, Taman Melawati, Fasa 6A, Hulu Kelang, 53100 Kuala Lumpur.

By way of another letter dated 23 November 1995 which was sent by personal service, the applicant informed the 1st respondent of another change of address which was stated as 0612, Jalan J-14, Fasa 6, Taman Melawati, 53100 Kuala Lumpur. The 1st respondent acknowledged receipt of same.

On 11 June 1996 the applicant commenced at the Kuala Lumpur High Court a Civil Suit No. S5-22-280-96 for specific performance against the 2nd respondent herein. From the defence pleaded the applicant gathered that the said property had been sold to a third party. The 2nd respondent refused to disclose the identity of the purchaser. On making a search the applicant discovered that the private caveat she had entered had been cancelled on 26 December 1996 and that the said property had been transferred to the 4th respondent on 11 March 1997.

The applicant then discovered that Form 19C which was the Notice of Intended Removal of Caveat issued by the 1st respondent and dated 8 May 1995 was forwarded to the address as had been stated in the caveat.

Case For The Applicant

The applicant averred that she never received the said Form 19C. She then wrote two letters to the 1st respondent in respect of the cancellation of the caveat and having received no response filed this application (encl. 1) by which she prayed for an order that the cancellation of the Private Caveat entered by her be declared as void and of no effect, that the said caveat be reinstated until the conclusion of the Civil Suit S5-22-280-96, that the 1st respondent do expunge the registration of the said title to the 4th respondent or alternatively an order that the said registration of the title to the 4th respondent be declared void and of no effect, and costs.

The Preliminary Objections By The 1st Respondent

The 1st respondent raised the objection that the applicant ought to have appealed pursuant to s. 418 of the (NLC) which reads:

> 418. Appeals to the court.
>
> (1) Any person or body aggrieved by any decision under this Act of the State Director, the Registrar or any Land Administrator may, at any time within the period of three months beginning with the date on which it was communicated to him, appeal therefrom to the court.
>
> (2) Any such appeal shall be made in accordance with the provisions of any written law for the time being in force relating to civil procedure; and the court shall make such order thereon as it considers just.
>
> (3) In this section 'decision' includes any act, omission, refusal, direction or order.

The 1st respondent argued that this application which was made pursuant to s. 417(1) of the NLC ought to be rejected.

Section 417(1) reads:

> 417. General authority of the court.
>
> (1) The court or a judge may by order direct the Registrar or any Land Administrator to do all such things as may be necessary to give effect to any judgment or order given or made in any proceedings relating to land, and it shall be the duty of the Registrar or Land Administrator to comply with the order forthwith.

With regard to the service of Form 19C the 1st respondent submitted that he had effected service by way of substituted service pursuant to s. 431(1)(e) of the NLC which reads:

> 431. Methods of service.
>
> (1) Without prejudice to any other method of service, a notice may be served on a person or body for the purposes of this Act –
>
> ...
>
> (e) by substituted service in accordance with section 432.

Section 432 which deals with service by way of substituted service reads as follows:

> 432. Substituted service.
>
> (1) The Registrar, where he is satisfied that a notice affecting land in the State cannot be served personally or by post (either because the person to be served is evading service or for some other reason), may order service to be effected –

(a) by affixing a copy of the notice in a conspicuous position – *a*

(i) on the land where possible; and

(ii) on a court-house, mosque or penghulu's office or balai, or in a market or other public place, in the area in which the land is situated; and

(b) by publishing a copy of the notice in the Gazette and, if he thinks fit, in one or more of the newspapers circulating in the State. *b*

(2) For the purposes of sub-section (1) a notice relating to document of title to any land shall be deemed to be a notice affecting the land.

In compliance with s. 432(1)(b) of the NLC the 1st respondent published a notice in the Gazette *vide* Gazette No. 967 which was exhibited to his affidavit to oppose the application. *c*

Since there was no response from the applicant and after the expiration of two months as stated in Form 19C, the 1st respondent cancelled the caveat and an indorsement was accordingly made on 26 December 1996. With regard to the notification of the change of address the 1st respondent argued that the applicant had failed to comply with s. 379(1) of the NLC which reads: *d*

379. Changes of address by proprietors, etc.

(1) Any person or body in whom any alienated land or interest is for the time being vested, or at whose instance a caveat has been entered in respect of any land or interest, shall within the prescribed time notify the Registrar in Form 26A of a change of his address, and the Registrar shall make an appropriate record thereof. *e*

The requirement of the notification of the change of address was to be in compliance with Form 26A. *f*

In reply Ms. Diljit Kaur arguing in person contended that the court ought to look at the substance and not the form. So long as she had notified by letters of both her changes of address, that ought to suffice. Referring to the Gazette Notification which was exhibited she contended that the said Gazette Notification failed to reproduce the entire Form 19C. *g*

Findings Of The Court

Section 417 or 418 of the NLC applicable *h*

Clearly this application made under s. 417 of the NLC must fail. In *Manilal & Sons Sdn Bhd v. Pentadbir Tanah Daerah, Kulim* [1998] 1 CLJ 87; [1997] 3 MLJ 573 the Court of Appeal held that the expression 'any judgment or order given or made in any proceedings' appearing in s. 417(1) is not confined only to a judgment or order given or made in the impugned proceedings but *i*

also includes any existing valid order of the court made in previous proceedings relating to the same lands.

In the case before me, there has been no judgment or order upon which this court is asked to direct the registrar to act, to give effect to such judgment or order. What has been done is an administrative act of the registrar in cancelling the caveat. Against that act there is a specific section in the NLC under which the applicant ought to have proceeded. She had three months to appeal from the date the cancellation of the caveat was communicated to her. In this case the applicant does not even say when she made the search and discovered for the first time that the caveat was cancelled. In any case she could have even applied for extension of time. Having failed to proceed pursuant to a specific section that provides the specific relief, namely s. 418, it is my judgment that the applicant cannot rely on s. 417 of the NLC.

Non compliance with Form 26A of NLC

The applicant contends that so long as she has intimated to the 1st respondent by way of letters and which letters the 1st respondent had acknowledged receipt of, there is no need for her to comply with Form 26A of the NLC. I do not agree. The NLC regulates all dealings relating to land. The forms provided in respect of the relevant sections provide the manner in which the said sections are to be complied with. According to the 1st respondent the Form 19C sent to the address stated on the caveat was returned with the note that the applicant had moved. The 1st respondent then proceeded to serve pursuant to s. 432(1)(a) and (b). The 1st respondent had annexed an exhibit to his affidavit (exh. AA-6) which showed that a notice under Form 19C was also displayed on the said land in question, on the notice board of the penghulu's office at Hulu Kelang and also on the Notice Board of the District Land Office, Gombak. This was fully in compliance with s. 432(1)(a)(i) and (ii) of the NLC.

Further, in compliance with s. 432(1)(b) of the NLC the 1st respondent also published a copy of the notice in the Gazette. Since no proper notice of change of address as required by s. 379(1) of the NLC was given to the 1st respondent, and I must add that this requirement carried the mandatory 'shall' in it, and since the notice of change did not conform to Form 26A of the NLC, I find that no proper notice was in fact given to the 1st respondent. In the circumstances, the 1st respondent acted within his rights when he proceeded to serve the Form 19C by way of substituted service.

Gazette Notification not in compliance with Form 19C

I reproduce herewith Gazette Notification No. 967:

WARTA KERJAAN NEGERI SELANGOR

1850 24hb Okt. 1996

No. 967

Kepada Diljit Kaur a/p Puran Singh beralamat di 6 Lorong Sentul Endah, Off Jalan Sentul Murni, Kuala Lumpur, dan yang atas permintaan Kaveat Persendirian Berdaftar No. 4320/94.J.49.F.167 adalah dimasukkan ke dalam hakmilik bagi tanah yang diperihalkan dalam Jadual di bawah ini.

Bahawasanya kaveat di atas itu adalah dimaksudkan supaya mengikut tanah itu sendiri/kepentingan khusus yang diperihalkan dalam Jadual tersebut.

Dan bahawasanya tuanpunya tanah penerima pajak/penerima pajak kecil/ pemegang gadaian dalam kepentingan yang diperihalkan telah membuat permohonan kepada saya supaya kaveat yang tersebut itu dipotong.

Adalah diberi notis bahawa, pada menjalankan kuasa-kuasa yang diberi oleh seksyen 326 Kanun Tanah Negara, saya akan apabila habis tempoh dua bulan dari tarikh penyampaian notis ini, atau sesuatu tempoh yang lebih lanjut (jika ada) sebagaimana yang diperintah oleh Mahkamah memotong kaveat itu.

JADUAL TANAH DAN KEPENTINGAN

Mukim – Hulu Klang No. P.T. – 4924, Jenis dan No. Hakmilik – H.S.(M) 2309 Bahagian tanah (jika ada) – semua.

Bertarikh 30 September 1996
[PTDG. 19.5.96 SK 6]

MOHAMMAD ROHIB BIN MISNAN
Pentadbir Tanah
Gombak

Other than the fact that the title to Form 19C, namely 'Notis Berkenaan Dengan Cadangan Hendak Memotong Kaveat' is not stated in the Gazette Notification No. 967 the rest of Form 19C is contained in it. The omission of the title to my mind is of no consequence. The Gazette Notification in itself contains the fact that notice to cancel the caveat is being given. That is sufficient.

In the circumstances the preliminary objections raised are upheld. The application (encl. 1) is dismissed with costs.